

The bill or petition under this section must recognize the eldest son's right of election and must be in accordance with the descent of laws. Necessary allegations. *Chaney v. Tipton*, 11 G. & J. 255.

The jurisdiction of equity, and of the old county courts, in cases of partition where the land is situated in one county only, is well established. The proceedings may be by *ex parte* petition or by bill and answer, but in both cases they must conform to the requirements of the descent laws. What the commission should require, and the return show, relative to the widow's dower. *Phelps v. Stewart*, 17 Md. 239; *Bennett v. Bennett*, 5 Gill, 463. And see *Hardy v. Summers*, 10 G. & J. 322.

Division and election apply only to property held by inheritance, and not to property taken by will or by purchase. *Johnson v. Hoover*, 75 Md. 489; *Colston v. Dorchester Court*, 4 H. & McH. 283.

The act of 1820, ch. 191, must be strictly complied with. A commission held not to be in compliance with the law, and hence invalid. *Stallings v. Stallings*, 22 Md. 46.

If the oath is not annexed to the commission, and the commission and return do not appear to have been ratified, the commission is invalid. *Massey v. Massey*, 4 H. & J. 141.

The court will not be prevented from issuing a commission by the purchase of the interests of several of the heirs, including a purchase from the husband of one of the heirs, of his wife's interest, no binding conveyance having been procured from the wife. *Chaney v. Tipton*, 3 Gill, 334.

For a case involving the question of "*res adjudicata*," as applicable to a proceeding under this section, see *Hardy v. Summers*, 10 G. & J. 316.

History of the acts dealing with "division and election" down to and including the act of 1820, ch. 191. Intent and construction of these acts. *Catlin v. Catlin*, 60 Md. 574.

1904, art. 46, sec. 33. 1888, art. 46, sec. 33. 1860, art. 47, sec. 33.
1820, ch. 191, sec. 8.

33. Whenever a majority of the commissioners to be appointed in virtue of this article shall qualify they may proceed in the execution of the same in the same manner as they may do when the whole commissioners qualify as aforesaid.

Ibid. sec. 34. 1888, art. 46, sec. 34. 1860, art. 47, sec. 34.
1820, ch. 191, sec. 14.

34. In the execution of this article, and before any proceeding is had by the commissioners, they, or a majority of them, shall cause notice to be given to all parties concerned by advertisement set up at the door of the court-house of the county or counties or city where the lands may lie, and in such other public places in the county or counties or city as they may direct, at least thirty days previous to their proceeding to execute the said commission.

The commissioner's return should affirmatively show what notice was given and how it was given. *Stallings v. Stallings*, 22 Md. 46. *Cf. Cecil v. Dorsey*, 1 Md. Ch. 223. And see section 37.

Matters relative to this section necessary to be stated in the bill or petition filed under section 32. *Hughes' Case*, 1 Bl. 47.

See sections 36, 37 and 47.

Ibid. sec. 35. 1888, art. 46, sec. 35. 1860, art. 47, sec. 35. 1820, ch. 191, sec. 15.

35. If any minor shall be interested who hath not a guardian then the court from which the commission issues shall appoint a guardian for the purpose.